

ROB BONTA
Attorney General of California
NICKLAS A. AKERS (SBN 211222)
Senior Assistant Attorney General
BERNARD A. ESKANDARI (SBN 244395)
EMILY C. KALANITHI (SBN 256972)
Supervising Deputy Attorneys General
BRENDAN RUDDY (SBN 297896)
MEGAN O'NEILL (SBN 343535)
MARISSA ROY (SBN 318773)
NAYHA ARORA (SBN 350467)
JOSHUA OLSZEWSKI-JUBELIRER (SBN 336428)
Deputy Attorneys General
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
Telephone: (213) 269-6348
Fax: (415) 703-5480
E-mail: bernard.eskandari@doj.ca.gov
Attorneys for the People of the State of California

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

People of the State of California, et al.

MDL No. 3047

V.

Case No.: 4:22-md-03047-YGR

Meta Platforms, Inc., Instagram, LLC, Meta Payments, Inc., Meta Platforms Technologies, LLC

**NOTICE OF INFORMATION IN
RESPONSE TO COURT DIRECTIVE
REGARDING STATE-AGENCY
DISCOVERY ISSUE**

**IN RE: SOCIAL MEDIA ADOLESCENT
ADDICTION/PERSONAL INJURY
PRODUCTS LIABILITY LITIGATION**

Judge: Hon. Yvonne Gonzalez Rogers

THIS DOCUMENT RELATES TO:

Magistrate Judge: Hon. Peter H. Kang

4-23-cv-05448

1 **TO THE COURT, ALL PARTIES, AND THEIR COUNSEL:**

2 In response to the Judge Kang's Minute Order (ECF No. 1370), Discovery Management
 3 Order (ECF No. 1380), and directive at the Discovery Management Conference on November 21,
 4 2024, the People provide the following information for counsel responsible for directing seven (of
 5 eight) state agencies identified in the Minute Order (California Office of the Governor; California
 6 Governor's Office of Business and Economic Development; California Department of Finance;
 7 California Department of Public Health; California Department of Consumer Affairs; California
 8 Business, Consumer Services, and Housing Agency; California Office of Data and Innovation)
 9 regarding provision of access to state-agency documents:

10 David Sapp (SBN #264464)
 11 Legal Affairs Secretary
 12 Office of Governor Gavin Newsom
 13 1021 O Street, Suite 9000
 14 Sacramento, CA 95814
 15 (916) 445-6115

16 In connection with the filing of Mr. Sapp's information on the Court's docket, the Office of
 17 the California Governor includes the following accompanying statement and update:

18 The Attorney General's Office does not represent the Governor's Office or agencies within the
 19 Governor's Administration in these judicial proceedings, except insofar as certain agencies not at
 20 issue in the current dispute are participating as nonparties responding to Rule 45 subpoenas, but we
 21 ask that the Attorney General's Office transmit this statement to the Court.

22 We understand based on the district court's and magistrate's most recent statements and orders that
 23 both courts construe the discovery orders in this case to apply to the Governor's Office and its
 24 agencies. We believed in good faith that the courts' prior orders, which were directed to the
 25 "parties," (see, e.g., Dkt. No. 1292, at 2), did not apply to those entities, including the Governor's
 26 Office and agencies within the Governor's Administration, that are not parties to the case, have not
 27 been served with any document, have not entered an appearance, and are not represented by the
 28 Attorney General's Office in these proceedings. Because the courts' recent statements and orders
 make clear that they do view our agencies as "parties," however, we are finalizing our engagement
 of outside counsel to ensure we have an opportunity to be heard, for the first time, via a special
 appearance to present our position that our agencies are not properly before the Court and that we
 are not proper recipients of party discovery.

29 We are also reaching out to Meta to communicate our continued willingness to meet and confer on
 30 and produce non-party discovery, as we have advised Meta previously, or through some other
 31 arrangement similar to the resolution that appears to have been recently reached with South
 32 Carolina. It is our expectation that those discussions will enable Meta to obtain the documents it
 33 seeks far more quickly and efficiently than if this matter were to be litigated further.

34 For the Court's awareness, since the Governor's Office was first made aware of Meta's requests,
 35 we have consistently maintained our position that, under the California Constitution, the

1 Governor's Office and those agencies within the Governor's Administration are separate and
 2 independent entities from the Office of the Attorney General, and that the Attorney General has no
 3 access to or control over records of those agencies in the Governor's Administration either as a
 4 practical matter or legally under California law, particularly when we have not retained the Office
 5 of the Attorney to represent us in the judicial proceeding, as is the case here. That position is
 6 supported by well-settled California case law holding that when the Attorney General brings a civil
 7 action on behalf of the People of the State of California, the Attorney General is not "in possession,
 8 custody or control of documents created or possessed by nonparty state agencies" and cannot be
 9 compelled to produce such documents via party discovery. *People ex rel. Lockyer v. Superior Court*
 10 (2004) 122 Cal. App. 4th 1060, 1079-80. It has been important to the Governor's Office and the
 11 Governor's Administration to preserve our position to avoid the creation of a conflict in authority
 12 between the federal and state courts in California on this issue of the constitutional structure of
 13 California's government, because this issue concerns the separation of powers in California and
 14 applies to state litigation beyond this case.

15 We reiterate that the Governor's Office and those agencies within the Governor's Administration
 16 remain willing to meet and confer and produce records, as nonparties, in response to a proper Rule
 17 45 subpoena, as we have previously communicated to Meta, or alternate arrangement. And, without
 18 waiving our position regarding party status, we are prepared to disclose search terms and custodians
 19 as part of such a meet and confer process. We intend to meet with Meta as soon as possible to
 20 discuss that path forward.

21 * * *

22 The Minute Order (ECF No. 1370) also identifies the California School Finance Authority
 23 (CSFA) as refusing to comply with the Court's orders. While reserving all rights and without
 24 waiving any objections, including to being considered a party for purposes of discovery in this
 25 action, the CSFA has taken the updated position that it is not refusing to comply and will produce
 26 documents responsive to Meta's document requests and is in the process of determining if any
 27 responsive documents exist. Consistent with the Court's direction, the People will facilitate
 28 further meet-and-confer efforts between Meta and CSFA.

29 Dated: December 2, 2024

30 Respectfully submitted,

31 /s/ Bernard A. Eskandari
 32 BERNARD A. ESKANDARI

33 Counsel to the People of the State of
 34 California